



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/172252

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Vernon County Human Services in regard to FoodShare benefits (FS), a hearing was held on June 06, 2016, at Chippewa Falls, Wisconsin. The matter had been dismissed on April 14, 2016, because the petitioner did not provide information on how to reach him for the hearing. The petitioner's request for a rehearing was granted on May 11, 2016.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that occurred because he did not report to the county agency that he was incarcerated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED] |
[REDACTED] |
[REDACTED] |

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.

2. The county agency seeks to recover the \$404 in FoodShare the petitioner received from September 1, 2015, through November 30, 2015.
3. The petitioner was an ongoing FoodShare recipient from sometime before July 2015 through November 30, 2015.
4. The petitioner has been incarcerated since July 13, 2015.
5. From September 1, 2015, through November 30, 2015, the petitioner received \$404 in FoodShare. All of those benefits have been used.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. Residents of institutions that provide over half of their meals cannot receive FoodShare. 7 CFR § 273.1(b)(7)(vi). Recipients must report a change of circumstances within 10 days. 7 CFR § 273.12(a)(2). Agencies must act on those changes the month after the reported change is due. 7 CFR § 273.12(c)(2).

The petitioner has been incarcerated since July 13, 2015, but he continued to receive the benefits through November 30, 2015, because he did not report this to the county agency. The agency now seeks to recover the \$404 he received from September 1, 2015, through November 30, 2015. He does not dispute this—he even admits that he allowed a friend to use of his remaining benefits, which constitutes trafficking, another violation of the program’s rules that can lead to an overpayment. *See* 7 C.F.R. § 273.16(c) and Wis. Stat. § 946.92(2). What he hopes for is that the person who used his benefits will repay them.

The department will accept repayments made on the petitioner’s behalf from anyone, but he alone is responsible for the overpayment. He acknowledged this. If his friend wishes to make payments, he should attach a copy of the department’s repayment demand letter with any payment and explain in detail what he is doing. In the meantime, I find that the petitioner was overpaid FoodShare and that the department may take any lawful means to recover it from him.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of FoodShare that occurred because he did not report that he was incarcerated.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of June, 2016

\s\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 7, 2016.

Vernon County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability